of the evidence of the 1st and 2nd prosecution witnesses" and notwithstanding his own statement that her alleged actions were by no means impossible. Mr. Shearn pointed out, in my opinion, correctly, that the evidence of the appellant's wife was in no respect inconsistent with the evidence of the 1st and 2nd prosecution witnesses. He argued, therefore, that the President was not justified in rejecting the evidence of this witness. I agree that the President was not justified in rejecting this evidence upon the grounds stated, but even if it were accepted, the evidence of the appellant's wife could not, in my view, in the circumstances of this particular case have very great weight.

Mr. Shearn conceded that if, apart from the evidence misconceived by the President, there was sufficient evidence to support the finding of possession the conviction must stand. The last few sentences of the President's grounds of judgment read as follows :—

"Chandu was being cooked and prepared that night in the hall of this house. At about 10 p.m. both the accused were in the hall while the process was being carried on. At about 2 a.m. the 1st accused was found in the hall again while the process was being carried on whereas the 2nd accused was on his way back along the verandah from the bathroom. The Defence version really broke down on its first point, which was to the effect that both the accused were in the hall when the Customs Officers entered. This, as I have already stated, I categorically reject. It seemed to me, therefore, that the Prosecution had adduced evidence of a joint enterprise on the part of the two accused being in possession of chandu in these premises, evidence sufficient to justify a conviction. The evidence adduced by the Defence I find on due consideration of all the evidence to be unreasonable and untrue, and I reject it. I am quite satisfied that these two men were together engaged that night in preparing chandu. The 1st accused was therefore convicted."

A careful perusal of the record satisfies me that the evidence supports these findings. Both accused were seen in the hall at 10.00 p.m. by an independent witness of whom the President said that although she was a woman of low social status he was quite convinced she was speaking the truth. He added "She had no axe to grind for either the Prosecution or Defence; in fact I should have expected her to have given evidence favouring the Defence case since she was a tenant on a daily basis of the 1st accused, and there was never any suggestion that she bore any grudge against the 1st accused." At 2.00 a.m. the same night the appellant was again seen in the hall by the Customs Officers. The recorded evidence for the defence, even taken in conjunction with the evidence of the 3rd witness, raises no doubt in my mind as to the truth of the prosecution case and clearly raised no reasonable doubt in the mind of the President. There was, therefore, sufficient evidence upon which the President could find as a fact, independently of any presumption, that the appellant was in possession of this chandu. It follows, therefore, that any mis-direction of himself regarding the question of occupation or the effect of the 3rd witness's evidence did not result in any miscarriage of justice.

I therefore, hold that the conviction of the appellant was right and the appeal must be dismissed.

Appeal dismissed.

KARUPPIAH PILLAY v. K. P. MOHAMED.

[App. Civ. Juris. (Hill, J.) April 6, 1950]

[Ipoh — Civil Application No. 12 of 1950]

Civil Procedure Code (Cap. 7), ss. 220 and 531 — Application for extension of time to appeal — Special circumstances.

This was an application under s. 531 of the Civil Procedure Code to extend the time in which to appeal from the judgment of the Magistrates's Court, Kampar. The judgment was given on the 13th of February 1950 and the solicitors for the appellant wrote to the Magistrate for the notes of evidence and grounds of judgment on the 17th February, 1950. The appellant's solicitors did not make any enquiries or make any attempt to obtain the grounds of judgment within the time limited for bringing the appeal. The notes of evidence and grounds of judgment were not delivered till the 10th March and the record from the Magistrate's Court was not dealt with until the 13th March, on which date the period within which the appeal could be brought had expired.

Held, following the decision in **Manickam v. Tremelbye (Selangor) Rubber Co. Ltd.** (1), that no special circumstances had been shown in this case and the application for extension of time must be dismissed.

Case referred to :—

(1) *Manickam v. Tremelbye (Selangor) Rubber Co. Ltd.* (1949) M.L.J. 90.

CIVIL APPLICATION.

J. D. M. Donnelly for the applicant.

S. M. Sharma for the respondent.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Hill, J. : — This is an application under Section 531 of Cap. 7 to extend the time in which to appeal against the judgment of the Magistrate's Court, Kampar.

The facts are as follows :—

(1) The Applicant was the Defendant in Civil Suit No. 5 of 1950 in the Magistrate's Court, Kampar. On 13th February, 1950, the Magistrate made an order for ejectment from premises in Kampar against the Applicant,

(2) On 17th February, 1950, the Applicant consulted Messrs. Maxwell, Kenion, Cowdy & Jones and on the same day Mr. Donnelly of the firm wrote to the Magistrate at Kampar requesting that the notes of evidence and Grounds of Judgment be sent.

(3) On 10th March, 1950, the notes of evidence and Grounds of Judgment were delivered at the office of Messrs. Maxwell, Kenion, Cowdy & Jones.

(4) Owing in part to an oversight in the solicitors' office, to the fact that a Sunday intervened, that one member of the firm was permanently absent on Anti-Bandit Month duties and that Mr. Donnelly was himself in Court on 10th March, the record from the Magistrate's Court was not dealt with until the 13th March, on which date the period within which the appeal could be brought expired.

On these facts I have to consider whether in accordance with Section 531 of Cap. 7 special circumstances exist which render an extension of time just.

I was referred very properly by Mr. Donnelly, for the Applicant, to the judgment of Willan, C.J., in *Manickam v. Tremelbye (Selangor) Rubber Co., Ltd.*[1]. In that case, although there was undue delay from the 5th to the 25th June by the District Court in complying with the provisions of Section 220, the Applicant's solicitors were informed by telephone, still within ample time for the appeal to be lodged, that the notes were ready. Owing to negligence in the solicitors' office no action was taken on the telephone message. The learned Chief Justice in exercising his discretion dismissed the application.

In the course of his judgment the learned Chief Justice stated :—

"It was the duty of the solicitors for the applicant to exercise reasonable diligence to ascertain from the District Court, either by personal visits, or by letter, or by telephone, within the time limited for bringing the appeal, whether the grounds of judgment were ready or when they were likely to be ready. They were not entitled, having merely written one letter asking for Grounds of Judgment and nothing more, to sit back and do nothing further to attempt to get them within the time limited for bringing the appeal."

In the present case it does not appear that the Applicant's solicitors made any enquiries or made any attempt to obtain the Grounds of Judgment within the time limited for bringing the appeal other than their original letter of 17th February, and in exercising my discretion on the circumstances of this particular application I do so following the ruling by Willan C.J. quoted above. Accordingly this application is dismissed with costs.

I desire, however, to make the following observations with regard to Section 220 of Cap. 7 as it seems very obvious that the real purport of the proviso to this section is not appreciated. The section reads as follows :—

"220. The judgments of Courts inferior to the Supreme Court need not contain more than the points for determination and the decision thereupon; provided that on the application of any party who is dissatisfied with any judgment of a Lower Civil Court within the time limited by Chapter XLV for appealing the Magistrate shall certify in writing the grounds of his judgment and deliver such certificate to the applicant."

It requires the Magistrate *on the application* of any dissatisfied party to certify in writing the grounds of his judgment and to deliver such certificate to the applicant. The words "within the time limited by Chapter XLV for appealing" relate to the application. If the application is out of time the Magistrate need do nothing, but if it is within the time limited by Chapter XLV it is the Magistrate's duty forthwith to comply with Section 220. He is not required to do something within the time limited for appealing, but to do it forthwith.

It follows that on receipt of an application steps should at once be taken to prepare the necessary documents and delivery should be effected with the utmost dispatch. There may well be rare occasions due to unusual circumstances when delivery is unavoidably delayed beyond a few days, but such occasions should be exceptional.

In this instance it took the Magistrate 21 days to deliver his Grounds of Judgment, etc. This was undue delay and a failure to comply with the provisions of Section 220. It was an entirely reasonable and proper request by the Applicant's solicitors to require delivery by post.

I feel that a proper appreciation by Presidents of Sessions Courts and by Magistrates of their duties under Section 220, as I have set out above, will do as much to obviate applications of this nature as will any display of diligence by solicitors.

Application dismissed.

LOO BENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) April 11, 1950]

[Ipoh — Criminal Appeal No. 8 of 1950]

Opium and Chandu Proclamation, s. 3 — Possession of chandu — Meaning of "occupier".

In this case the appellant had been convicted of possession of chandu, which was found in a room where